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Insolvency of the Romanian administrative - territorial units. Novelty and challenge for the public administration

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Abstract

This study analyzes the introduction impact, for the first time in the Romanian legislation, of the possibility of entry into a state of financial crisis and even financial insolvency/bankruptcy, with all the social and economic implications, of the Romanian administrative - territorial units (communes, cities, municipalities, counties).

The scientific approach starts with a direct manifest on the accountability of decision makers involved in the local and central administration (both those in the legislative and the executive area), continues with brief technical considerations on the administrative-territorial units (beneficiaries of the new legislation regarding insolvency), and finally, analyzes the rationale of adopting the Regulations before treating its weaknesses, to conclude that “...*The insolvency proceedings for debt recovery under the tutelage of the normative imposed by the Government Emergency Ordinance no. 46/2013 by respecting a financial recovery plan are difficult, costly, lengthy and unpredictable, which can be considered at one point, inefficient...*”.

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1. About accountability in governing

Over the years many have looked into precisely the human nature through the multitude of social situations filter in which they could find in, notable among them are: Jean de La Bruyere, Jean-Baptiste Poquelin (aka Moliere),

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Michel de Montaigne, Rene Descartes, Blaise Pascal, Francois de La Rochefoucauld.

One of the largest known moralists was La Bruyere, who, through a fine sense of observation and a consummate art of writing, noted in his monumental work “Les Caracteres ou Les moeurs de ce siecle” (1688) in Chapter X “On sovereignty or on government”: “What a **happy job** is that which gives a person at any time the opportunity to do good to so many thousands of people! What a **dangerous position** is that which gives a person the possibility to harm, at any time, a million people!” (De La Bruyere, J., 1968). “...If he is good (n.n. the King), he must know the most lasting and the purest of pleasures in laboring for virtue” (De La Mothe - Fenelon, F. de S., 1699, quoted in De La Bruyere, J., 1968).

These ideas, expressed more than 300 years ago, are marked by a timelessness of hypotheses. Thus, the two values of a function involving the state authority exercise are emphasized.

For the purpose of acquiring a character specific to exercising the ownership by the fulfillment of the governing act testifies a maximum attributed to King Louis the XIVth (Sun King): “*L’état, c’est moi*” (*I am the State*). This, along with the phrase “*la grace de Dieu*” (“*the grace of God*”), represents the abstract of the ordinary painting of French royalty in the centuries before the Revolution of 1789 (Rowen, H.H., 1961). Thus, it is undeniable the preference for a democratic system, in which *virtually everyone*[†] sufficiently popular and respecting the laws can be elected to protect the interests of the community, the latter having the sanctioning power of a weak management of public affairs by **voting**.

However, from the everyday realities perceived, we cannot stop from asking ourselves the following rhetorical question: **The voters are created for the elected or the elected for the voters?**

One of the best poets and most devoted people to the Romanian nation, Mihai Eminescu (1999) (quoted in Mazilu D., 2013), noted:

*“The surest way to subordinate a country is to impoverish it...
A State is like the person... has as much freedom and equality as wealth. And the poor is always slave and unequal to the one standing over him.
He who has nothing... give him all the possible freedoms, he is still a slave, the slave of his needs, the slave of the first, who holds a piece of bread in his hand. For it is the same if you close a bird in a cage or you gathered from everywhere the grains on which it feeds!”*

Nothing more true that the sustainable development of a local, regional or national community is done through the good governance and long-term debt; the reliable credit received by the political and administrative power from the voter, as long as it is well managed by them, can be a real “fuel” for a frugifer mechanism designed to work in the interest of the society.

2. About the Romanian administrative-territorial units

The Romanian Constitution[‡], in the article 3 reserved to the territory, provides by the dispositions of the paragraph 3 that the territory is organized, administratively, into communes, cities and counties, and that “according to the law” some cities can be declared municipalities. This provision was also taken by the text of the article 1 paragraph 2 of the Law no. 215/2001 (Local Public Administration Law).

According to the article 21 paragraph 1 of the Local Public Administration Law, the administrative-territorial units are legal persons under public law with full legal capacity and private patrimony. The administrative-territorial units are holders of the rights and obligations arising from the contracts regarding the administration of assets belonging to the public and private domain of which they are parties, and the relationships to other individuals or legal persons, but in the same time, obligations and responsibilities on ensuring a minimum of public services to citizens of that community.

Statistically speaking (the Directorate for local fiscal and budgetary policies of the Ministry of Regional Development and Public Administration 2014a), Romania is organized in 3228 administrative-territorial units and sub-divisions, of which: 103 municipalities (including the Municipality Bucharest), 217 cities, 2861 communes, 6

[†] Limitations of the right to be elected mayor, local adviser, county adviser, we find in the article 5 paragraph 2 of the Law no. 67/2004.

[‡] As amended by the revision Law of the Romanian Constitution no. 429/2003 published in the Official Gazette no. 669 of 22 September 2003 and republished in the Official Gazette no. 767 of 31 October 2003 with the updating of the names and giving the texts a new numbering.

sectors of the Municipality Bucharest and 41 counties[§].

Browsing the public administration sector of the administrative-territorial units we can identify those *happy jobs/dangerous positions* which La Bruyere spoke of as being the following: Mayor; Deputy Mayor; Local Adviser; President of the County Council; Deputy President of the County Council; County Adviser.

Acceding to these positions will be made according to the conditions of the Law no. 67/2004** on the election of local public administration authorities based on direct vote (local advisers, county advisers, mayors and presidents of county councils) or indirect vote (vice presidents of county councils and deputy mayors - by county councils and local councils).^{††}

3. About developing the legal framework designed to help the administrative-territorial units to recover financially. The situation in other countries.

The concern in Romania for a regulation of the situation of financial distress and insolvency of the administrative-territorial units long precedes the adoption of the Government Emergency Ordinance no. 46/2013.

Thus, since 2006, with the adoption of the Law 273/2006 on local public finances, the legislature was quite diligent in stipulating by the provisions of the article 85 that, within 6 months of the entry into force of the law, the Ministry of Administration and Interior and the Ministry of Public Finances will develop the special bill on the application procedure of the article 74 and article 75 procedures which deal generally with the financial crisis and the insolvency of the administrative-territorial units, although the political will, unfortunately, has only facilitated this move in 2013, and this following the emergency ordinance procedure.

The two ministries have initiated the procedures and for drafting the project the Inter-ministry Council for Administration and Public Service, Decentralization, Local Communities issued the Decision no. 1/10.07.2006 on the establishment of the Inter-ministry Group for financial crisis and insolvency of the administrative-territorial units, of which were a part of representatives of the associative structures of the local public administration, of the Ministry of Justice, of the Romanian Court of Accounts, of the Superior Council of Magistrates, of the Romanian Banks Association and civil society, following the consultation procedures provided by the Government Decision no. 521/2005 on the consultation procedure of the associative structures of local public administration authorities in drafting the legislations.

This project was approved by the Government and sent for debate to the Romanian Parliament in 2010. The project was rejected by the Senate on 4.10.2010; on 13.10.2010 was registered at the Chamber of Deputies, the decisional chamber, under number PL-x no. 540/2010 and on 10.29.2013 the plenary of the Chamber of Deputies endorsed the Rejection Report on the draft Law on the financial crisis and insolvency of administrative-territorial units, whereas the provisions of the initiative were taken entirely by the Government Emergency Ordinance no. 46/2013. The shorting of the parliamentary procedure by adopting the draft law as the Emergency Ordinance was motivated by the Government with the fact that some negative consequences were imminent. In this regard:

- The Romanian Government assuming towards the external financers (International Monetary Fund, World Bank and European Commission) the adoption of the draft law until the evaluation for entry into the International Monetary Fund board and given that the parliamentary procedure exceeds the evaluation period, Romania risks not entering the International Monetary Fund board.
- The Standby Agreement termination between Romania and the International Monetary Fund.
- Increasing the arrears recorded by the administrative-territorial units/subdivisions.
- Blocking the activity of the suppliers of goods, services and works that have to recover from the local public administration authorities amounts representing arrears.

The stated purpose of the emergency ordinance is to strengthen and stabilize the financial situation of the administrative-territorial units and, at the same time, to support their economic and financial discipline.

[§] We notice that the villages are not administrative-territorial units.

^{**} Published in the Official Gazette no. 271 of 29 March 2004.

^{††} Limitations of the right to be elected are stipulated in the Law no. 67/2004 in the article 5 paragraph 2; Dispositions on the incompatibility of the local elected we find in the texts of the Law no. 161/2003 in the article 87-93 (N.B. the incompatibility does not represent an impediment in registering for an electoral race, the local elected having the obligation to resign from the position that draws the state of incompatibility in a maximum of 15 days from the election in this position) but also in the Constitution (see the article 84 and the article 105).

This law is designed to regulate the involvement of the relevant institutions in financial and economic recovery of the administrative-territorial unit in the situation of financial crisis and insolvency, the administrative-territorial unit creditors' rights and obligations and the local public administration authorities' rights and obligations.

The procedure provided by the Emergency Ordinance becomes a transparent mechanism for recovery of debts which enables the local public administration authorities to improve the economic and financial situation of the administrative-territorial units so that they can ensure the provision of community essential services, can meet on time the payment obligations and can meet the financial obligations to the employees and suppliers.

With the adoption of the Government Emergency Ordinance no. 46/2013 it was intended to provide both a protection for the administrative-territorial unit towards creditors' aggression and a guarantee for the business environment that they will recover their claims from the administrative-territorial units in difficulty.

At European level, for a long time, the only special legislation providing bankruptcy of administrative-territorial units we could find was only in Hungary. Thus, the Law XXV of 1996 (Law of regulating administrative-territorial debts) was the first law of this kind in Europe. The criteria for establishing the insolvency state is similar to the classic one used to establish the insolvency state in the private sector. The causes of bankruptcies in Hungary ranged from private administrative-territorial unit business activities failed, to guarantees issued by the administrative-territorial unit executive without the knowledge of the local council for the benefit of the local public investment programs (tangent to gas supply) that have been shown to exceed the financial capacities of the administrative-territorial unit.

The United States of America has one of the oldest laws on insolvency of administrative-territorial units (eng. *municipalities*^{††}). Thus, the first *municipal* bankruptcy law (for facility we will use the term of *municipality* in the extended sense of the notion *municipality* provided in the Chapter 11 of the United States of America Code, referring to both municipalities and communes, cities and counties) appeared in 1934 amid the Big financial crisis that started on 29 October 1929^{§§}. In shaping the law draft, more attention was paid to the failure to achieve the expected procedures of the sovereign states powers, as guaranteed by the 10th amendment^{***} of the American Constitution, however, in the same year, the coding was determined to be unconstitutional. Later, in 1937, after review and passing the test of constitutionality, the new legal framework was adopted as being encoded as the Chapter X of the Insolvency Code (subsequently the provisions were restored in the Chapter IX). The purpose of the procedure regulated by Chapter 9 is to provide the financially distressed municipalities protection from their creditors while they develop and negotiate a plan for adjusting their debts. The means by which this is done in Chapter 9 are varied: postponement of debt chargeability, reducing the interest rates or refinancing the debt by obtaining new loans. We note that, in the American public administrative system, operate specialized institutions that, annually or periodically, examine the financial situation of the administrative-territorial units, giving them the rating appropriate to their financial credibility, allowing **in practice**, to warn the economic subjects interested and the citizens of that community of the state of "financial emergency" in which a community can enter. In this way we can predict severe economic conditions of the administrative-territorial units, and implicitly necessary preventive measures. All this data on the economic and financial status of a community and its analysis conducted by these specialized institutions are necessarily made public to the interested citizens and companies.

4. Financial crisis and insolvency of Romanian administrative-territorial units

Currently Romania has no administrative-territorial unit (UAT) officially in *financial crisis* but it has a city and 3 communes that demanded and obtained the opening of the *insolvency* proceedings^{†††}. Thus, the official data obtained from the website of the Ministry of Public Finances indicates the following:

^{††} According to the chapter 11 of the United States of America Code in the section destined to understanding some notions (§101) the provision of the section 40 stipulates that the *municipality* refers to a political subdivision, a public agency or agencies that provide public services and are subordinated to the local states or governments (the later entity being known as *public instrumentality*).

^{§§} Previously known as "black Tuesday".

^{***} The 10-th amendment of the Constitution of the United States of America: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people".

^{†††} An essentially legal proceeding; the emotional argument that based this option we can say it was the trust in a functional and reliable legal system.

- **City Aninoasa^{†††}** - by the decision of opening the insolvency proceedings no. 868/F/2013 of 17/06/2013 of the Court Hunedoara; value of liabilities, amount and due, older than 120 days, except those in commercial litigation ^{§§§}, at the time of declaring the insolvency state is of **3.377.629 lei**.
- **Commune Ardeleani** - by the decision of opening the insolvency proceedings no. 01/10/2014 4829/110/2013 of the Court Bacau; value of liabilities, amount and due, older than 120 days, except those in commercial litigation at the time of declaring the insolvency state is of **5.314.084 lei**.
- **Commune Nalbant^{****}** - by the decision of opening the insolvency proceedings no. 01/31/2014 220/2014 of the Court Tulcea; value of liabilities, amount and due, older than 120 days, except those in commercial litigation at the time of declaring the insolvency state is of **39.014.873 lei**.
- **Commune Naruja** - by the decision of opening the insolvency proceedings no. 43/2014 of 25.02.2014 of the Court Vrancea; value of liabilities, amount and due, older than 120 days, except those in commercial litigation at the time of declaring the insolvency state is of **1.505.931 lei**.

Before setting out considerations of the study, we want to graphically present the budget process ^{†††† ††††} (Directorate for local fiscal and budgetary policies of the Ministry of Regional Development and Public Administration 2014b) (Figure 1) and the local budget incomes structure^{§§§§} (Figure 2) for a better understanding of the study:

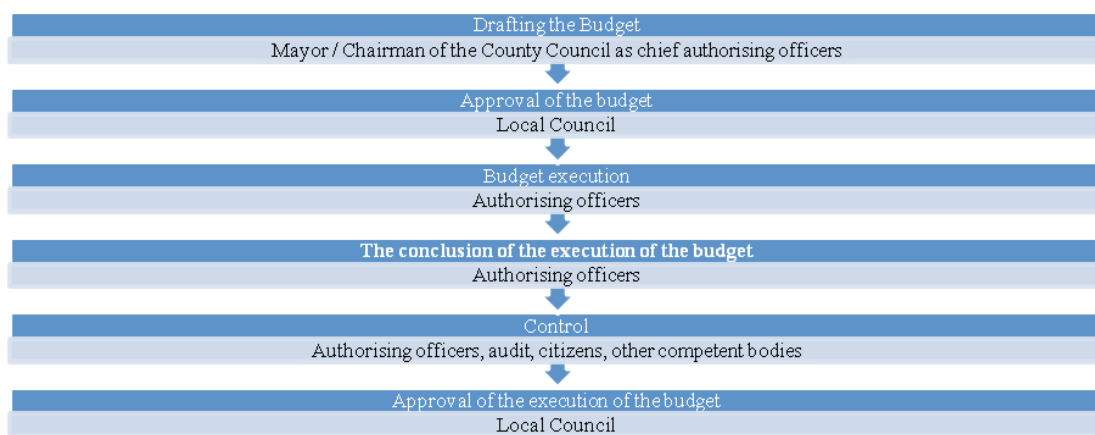


Fig. 1 Budget process chart

We note that in Figure 1 is presented the phasing of the development/approval/control process of the administrative-territorial unit local budgets after the state budget and the County Councils budget was already approved for the current year.

All these operations of budget planning for administrative-territorial units according to the Law on public finances, spanning a period of three calendar years - the draft of the local budget ^{*****} begins in the year preceding that for which it is drawn; the execution takes place during that year; and the completion takes place by approval of the budget exercise in the following year.

^{†††} Is the first administrative-territorial unit to which we apply the procedure provided by the Government Emergency Ordinance no. 46/2013.

^{§§§} It is worth mentioning that the New Civil Code discarded the term of **merchant** (ro. **comerciant**) in favor of a wider notion of **professional**.

^{****} Up to now, it is the administrative-territorial unit with the largest financial liabilities.

^{††††} According to the dispositions of Chapter III reserved for the budget process (art. 25 - art. 60) of Law nr. 273/2006 regarding local public finances (The Law of Local Public Finances).

^{††††} On the importance of budgetary activity, also see Zdanovschi, A.C.M., 2014, *Aspecte privind legea bugetară anuală*, in The Romanian forced execution magazine, no. 1/2014, Universul Juridic Publishing House, Bucharest, p. 136-147;

^{§§§§} We won't present the structure of the expenditures of the administrative units due to the fact that, as we will show, they bear some limitations in this procedure, to provide the essential public services within the meaning of art. 2 point s of GEO nr. 46/2013, as required by art. 74 para. 11 of the Law on local public finances.

^{*****} The structure of local budgets emerges from Annexes 1 and 2 of the Law of local public finance.

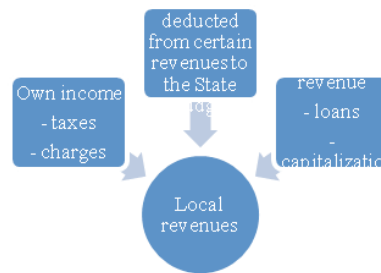


Fig. 2 Local budget incomes structure

After a careful study of the administrative-territorial units budgets incomes (Directorate for local fiscal and budgetary policies of the Ministry of Regional Development and Public Administration 2014c) entered into insolvency, we can see that the personal incomes value is much lower than the balance incomes value deducted from sources of the state budget, which raises a big issue with the imprecision of the forecasts made with the development of the recovery plan to identify the restoration measures of the financial viability.

If the expenses of an administrative-territorial unit can easily grow from one year to another, at best remaining at the same level, the incomes are likely to be more volatile, being able to experience a **vulnerability** in the property tax chapter, transportation means of individuals and companies or of allowances deducted from the global income tax and a **major unpredictability** of the balancing amounts deducted from the state budget^{††††}, which minimizes the success chances of a financial recovery plan.

According to the article 32 paragraph 1 of the Local Public Finances Law, the deducted quotes from the global income tax received from the state budget at the level of each administrative-territorial unit and monthly allocated are as follows: 41.75% at the local budgets of communes, cities and municipalities; 11.25% at the local budget of the county; 18.5% in a separate account, opened on behalf of the General Directorate of Public County Finance at the treasury of the municipality county residence, to balance the administrative-territorial unit budgets^{†††††}.

Also, article 33 of the Law on Public Finances provides the allocation of quotes and amounts deducted from certain incomes of the state budget, with special purpose and for balancing the local budgets. It can be seen that this type of transfer from the state budget is more unpredictable than the income tax returns because, as shown in the calculation formula, these amounts depend on other factors external to the administrative-territorial units in insolvency, like the number of inhabitants in the county or in all the counties, the income tax average per inhabitant collected in the county or total counties in the year preceding the calculation year (see the equation 1). Thus, even if we obtain efficiency in the percentage of tax collection at a single administrative-territorial unit level in a particular county, it may be that another administrative-territorial unit in the same county will break the balance so that, at the county level, lesser amounts of money will be allocated, jeopardizing once again the success of the recovery plan.

$$Sr . j = \frac{\frac{Ivm . tj}{Ivm . j} \times \frac{Nr . loc . j}{Nr . loc . tj}}{\sum_{j=1}^n \left[\frac{Ivm . tj}{Ivm . j} \times \frac{Nr . loc . j}{Nr . loc . tj} \right]} \times Sr . tj \quad (1)$$

^{††††} In accordance with art. 32 para. 1 of Law 237/2006 shares deducted from the income received by the state budget and allocated each month to the UAT is as follows: 41.75 % to local budgets of communes, cities and municipalities, 11.25 % of the local budget of the county and 18.5 in a separate account, opened on behalf of the directorate of public finances at the treasury of the county municipality to balance the budgets of the UAT; also art . 33 provides for the allocation and the amounts deducted from certain revenues of the state budget for special purposes and to balance local budgets.

^{†††††} For Bucharest Municipality the shares are calculated according to para. 3 of the same article.

Where, $Sr.j$ - deducted amounts to distribute to the county; $Sr.tj$ - deducted amounts to distribute to the total counties; $Ivm.j$ - income tax average per inhabitant collected per county in the year preceding the calculation year; $Ivm.tj$ - income tax average per inhabitant collected per total counties in the year preceding the calculation year; $Nr.loc.j$ - number of inhabitants in the county; $Nr.loc.tj$ - amount of county inhabitants.

Also, a disturbing factor in assessing the administrative-territorial unit incomes development in a difficult financial state is that the State Budget Law is an annual organic law providing a lack of predictability regarding the income sources transferred from the state budget.

Moreover, there are public services under the direct responsibility of the administrative-territorial units whose funding is shared between the administrative-territorial units local budget and the state budget, without expressly indicating the participation quote in the financing of these services by each budget. In these cases, it may be that from one year to another the state budget participation in funding is different, thus putting the local budgets in a big budget planning difficulty.

One thing is important: when proceeding to develop a financial recovery plan, the incomes forecasts must be made with great caution. We have decided to recommend a percentage formula applicable to the amounts deducted from the state budget for balancing for the previous year to simulate the flow of future incomes, this heavy burden falling on the insolvency practitioners, starting from the particularities of each situation. However, if on the amounts deducted from the value added tax (VAT) we cannot suggest certain indicators of future constant incomes, for quotes applied to the global income tax, we must take into account the increase^{sssss} or decrease of the community members incomes calculated on the basis of certain investments and economic activities prospective locally or on their exit from the local or regional market.

If an administrative-territorial unit has no economic activity that brings added value or if it does not facilitate and stimulate the private initiative, the insolvency risks becoming a safe reality. In fact, the local administrative autonomy requires a degree of financial independence. The Law no. 215/2001 (Local Public Administration Law), in explaining the meaning of the local autonomy concept refers to the *actual* capacity of the local administration authorities to address and manage on behalf and in the interest of the local communities they represent, the public affairs, or such an effective capacity does not exist in the conditions that there are no access to financial resources generated by a sustainable economic development.

In designing the recovery plan we should take into account the fact that the Government is not in a tutelage relationship with the administrative-territorial unit; is not a guarantor of it, meaning that the Government cannot be bound by annual or multi-annual budget plan to allocate the amounts necessary for overcoming the financial crisis or insolvency.

According to the current legislation, the responsibility to overcome the insolvency is exclusively the task of the administrative-territorial unit.

One of the necessary measures in the restoration plan is the expenses reduction. Of course, these reductions cannot be made radical and uniform because of the risk of denying the purpose for which a community is administratively organized - to sustain the achievement of general and local interests by the offered public services. In this respect, the Government Emergency Ordinance no. 46/2013, by the provisions of the article 75 paragraph 8, ensures the operation of some essential public services, as it defines them in article 2 section s as being the “public services without which the administrative-territorial unit cannot operate and which will be established by Government decision within 75 days from the date of entry into force of the Government Emergency Ordinance no. 46/2013”. In the annex of the Government Decision no. 647/2013 are established the essential public services at the administrative-territorial units level, respectively: 1) Taxes and local taxes; 2) People record; 3) Land register; 4) Landscaping and urbanism; 5) Emergency situations; 6) Education and auxiliary services for education; 7) Health; 8) Culture; 9) Religion; 10) Social care; 11) Water supply and sewer; 12) Public lighting; 13) Sanitation and waste management; 14) Generation, transport, distribution and supply of thermal energy in centralized system; 15) Authorization and approval of county public transport and local public transport of passengers.

Reported to the rest of the operating expenses, the list of essential public services puts high pressure on a budget of a low level administrative-territorial unit (N.B. we remind that 3 of 4 administrative-territorial units subject to the

^{sssss} Investment implications for the local budget : recording an increase in their income from shares deducted from income tax; potential relief of the local budget expenses on the insurance segment and with social assistance services.

insolvency proceedings are modest communes^{*****}), hence rising further difficulties in developing an effective plan which has as a maximum execution time a period of 3 years, with effect from the date of its admission (according to the article 103 of the Government Emergency Ordinance no. 46/2013).

Following the steps imposed by the Government Emergency Ordinance no. 46/2013, between the date of opening the insolvency proceedings and the date of admission of the financial recovery plan^{†††††} it may take a rather large period of time; thus, it is recommended to adopt the Hungarian legislature appropriated solution which led to reaching an agreement between the municipality and the creditors on the recovery plan within 210 days of the procedure initiation under the threat of a potential dissolution of the administrative-territorial unit local council and organization of early elections at the request of the court submitted to the Parliament; the same measure can also be applied if the municipality has not honored even after 270 days an outstanding receivable, taking into account, however, the time needed to organize a public auction to seize its assets. (Kopanyi, M., et al. 2004)

The solution could be accused to add instability to an already sensitive moment, but we consider that it was provided for those extreme situations of total non-cooperation.

Looking at other systems, from the organization mode of the sub-national level of the United States results a feature that distinguishes its system from that of our country. While the article 27 paragraph 1 of the Public Finance Law in Romania provides that the local taxes are approved by the local and county councils and the General Council of the Municipality Bucharest, within the limits and conditions of the law, the United States of America specific is in that the taxes can be established by the local representative bodies but also by the special district governments or of the school districts^{†††††}, which are basically entities with their own legal personality, with substantial administrative and fiscal autonomy towards the administrative-territorial units (eng. *general purpose local governments*), while having the possibility of being subject to the insolvency proceedings^{§§§§§}.

According to the article 22 of the Government Emergency Ordinance no. 46/2013 the managerial role is reserved for the legal administrator or the main credit coordinator of the administrative-territorial unit (if his right to exercise the powers of main credit coordinator was not suspended); he can, however, have a major role in shaping the recovery plan despite any express provision from the emergency ordinance.

Registered as another shortcoming of the legal framework, although the provisions of Government Emergency Ordinance no. 46/2013 do not provide him the prerogative of imposing some measures provided by the plan (the court, for example, cannot impose taxes; the establishment of taxes is not a legal activity, but one related to the exercise of sovereignty), it may reject the plan giving a new term, as indicated in the last sentence of the article 100 of the Ordinance, to restore it according the coordinates shown by the court^{*****}.

An issue that arises if the creditor is engaged in an enforcement procedure (Oprina, E., Garbulet, I., 2013) is that no matter how advanced it may be, the debt sufficiency may be delayed by the debtor recurring to the insolvency procedure instituted by the Government Emergency Ordinance no. 46/2013 or to the provisions of the Government Ordinance no. 22/2002 on the enforcement of the public institutions payment obligations, established by enforcements. Thus, article 6 paragraph 1 of the Government Ordinance no. 22/2002 enables the debtor institution or public authority **to request** the court a grace period and/or setting of staggered payment terms of that obligation in cases in which “from solid reasons on the realization of duties provided by the law, the debtor institution cannot

***** The Hungarian experience (Aczél, Á., Homolya, D, 2012) shows that up to 2010 bankruptcy affected mainly small UAT; after 2010, UAT like Szigetvár, Esztergom or Heves County were also subject to insolvency proceedings.

††††† First, the plan is drawn up by the receiver together with the chief authorising officer and approved in accordance with art. 75 para. 7 of the Law on local public finances; then it is submitted to the local council for approval within 10 days of the drawing, according to para. 10 of the same article; following an approval by the creditors' meeting by a majority vote of creditors representing two thirds of the value of claims; then ultimately having been accepted or rejected by the syndic.

§§§§§ For a census of the various types of American local governments see U.S. Census Bureau, 2012 Census of Governments, Individual State Descriptions: 2012, U.S. Government Printing Office, Washington, DC, 2013 <http://www2.census.gov/govs/cog/2012isd.pdf> - accessed on 14.07.2014.

§§§§§ American municipal insolvency procedure is allowed only at the request of the debtor, here arising numerous consequences especially on ratings issued by credit rating agencies such as Standards & Poor's, Fitch Ratings and Moody's Investors Service; stigma that comes with the opening of insolvency proceedings is due to the presumption of waiver of an efficient management of their operations, ultimately having taken the form of negative indicators of management performance; even having survived an insolvency procedure, the implications of municipal creditworthiness rating will linger for a long time (Petek, G., Previdi, J., Murphy, S., Montrone, B., 2012).

***** The guidelines are not binding on the chief authorising officer and the receiver who developed the recovery plan, but cooperation between the parties is welcome given that any delay is harmful for both debtor and creditors.

fulfill its payment obligation”, and the paragraph 4 enables the court that **on request** of the debtor institution to pause the commencement or continuation of the enforcement pending the resolution by final and irrevocable decision of the demand regarding the grant of the grace period or the payment terms of the due amount; the Government Emergency Ordinance no. 46/2013 on the other hand, by the provisions of the article 66, establishes one of the most important effects of opening the insolvency proceedings - the **rightful** suspension of all the judicial or extra-judicial actions to achieve the claims on the administrative-territorial unit^{††††††††}. Thus, a debtor acting in bad faith could delay the lawsuit, postponing the execution of the obligations and thus damaging its creditors.

Conclusions

1. The insolvency proceedings for debt recovery under the tutelage of the normative table imposed by the Government Emergency Ordinance no. 46/2013 by respecting a financial recovery plan are difficult, costly, lengthy and unpredictable, which can be considered, at one point, inefficient.

2. Moreover, the efficiency of applying the Government Emergency Ordinance no. 46/2013 for safeguarding the administrative-territorial units pales in the face of some **endemic**^{††††††††} problems such as:

- The exodus of community members, thus decreasing the number of local budget contributors;
- The infrastructure degradation and the local administrations inability to create stimulating conditions for the local economic development;
 - The market exit of businesses that provided jobs especially in localities with mono-industrial specific;
 - Any other problems whose solution involves a substantial infusion of money and structural changes, which entail a high risk of insolvency recurrence. These require solutions unforeseen by the ordinance levers.

However, to avoid the negative economic, social and political^{§§§§§§§§} effects of this procedure, it is recommended to initiate in good faith and timely the negotiations for the organizational restructuring, rescheduling of debts and cessation of non-essential public services.

3. A bold solution if there are indications that the repayment in an insolvency procedure would not be 100% or a satisfactory percent, as a response to the difficulty in debts recovering from the administrative-territorial units by way of enforcement of common law or in the proceedings provided by the Government Emergency Ordinance no. 46/2013 and to the ban imposed by the article 139 of the Tax Procedure Code to prosecute taxes, contributions and any other revenues of the budget, would be the conclusion of an assignment of debt, usually at a lower but convenient price, between the municipality creditor and a debtor taxpayer of the community with a debt in a comparable amount, so that the rightful compensation^{*****} becomes attractive that intervenes according to the article 116 paragraph 4 of the Fiscal Procedure Code. The compensation will be made at the amount of the assigned claim and not at the value at which it was assigned. Of course, being a bilateral contract but still a triangular operation, this assignment must be notified to the municipality for enforceability.

4. From the analysis of the facts induced by triggering the payment inability state of some Romanian administrative-territorial units, we propose that in the financial recovery process of the distressed communities, without economic development capacity in the medium term, also be involved directly and actively the administrative structures of decision at the county and national level, taking into analysis the system applied in the administration of the United States of America.

^{††††††††} We consider to be an inconsistency of the ordinance attributing the syndic with **the right** to suspend any procedures that help meet a creditor's debt (art. 21 h), this falling just outside the peculiarities of a law of insolvency proceedings that is designed in the spirit of cooperation between creditors as to arrange them at the same table, in an orderly fashion so as to coordinate the satisfaction of their claims.

^{††††††††} The effects of isolated causes that led to the initiation of insolvency proceedings can be neutralized with a higher success rate by applying the ordinance.

^{§§§§§§§§} It is unlikely that the opening of insolvency proceedings will not have a negative impact on the image of the people responsible for the management of the administrative-territorial unit's assets that contributed to this reprehensible situation.

^{*****} According to art. 116 para. 1 of the Tax Procedure Code: "By compensation, state's or territorial-administrative units' claims like taxes, fees, contributions and other amounts owed to the general consolidated budget are written off if the debtor's claims represent amounts repaid, refunded or payment from the budget, up to the lesser amount, when both parties mutually acquire the capacity of a creditor and a debtor, provided that the claims are managed by the same public authority".

5. Analyzing the structure of the personal incomes in the majority of the Romanian administrative-territorial units (communes and cities) and the local administration capacity to maximize these incomes by themselves, we propose the creation of an independent analysis institution of the financial rating of each community to prevent their entry into a state of financial crisis or insolvency.

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References

- Aczel, A., Homolya, D., 2012. *Risks of the indebtedness of the Hungarian local government sector from a financial stability point of view*. Study published in: Crisis Aftermath: Economic policy changes in the EU and its Member States, Conference Proceedings, Szeged, University of Szeged, Volume ISBN 9, 2012, p. 157-169;
- De La Bruyere, J., 1968. *Les Caracteres ou Les moeurs de ce siecle*, volume II, Publishing House Pentru Literatura, p. 31;
- De La Mothe-Fenelon, F. de S., 1699. *Les aventures de Telemaque*, chapter XVIII, apud. De La Bruyere, J., 1968. *Les Caracteres ou Les moeurs de ce siecle*, volume II, Publishing House Pentru Literatură, footnote 2, p. 32;
- Directorate for local fiscal and budgetary policies of the Ministry of Regional Development and Public Administration. 2014a. *Numarul si clasificarea UAT-urilor din Romania* [Online]. Valid at: http://www.dpfbf.mdrap.ro/nr_uat-uri.html [Access: 11 June 2014];
- Directorate for local fiscal and budgetary policies of the Ministry of Regional Development and Public Administration. 2014b. *Procesul bugetar local* [Online]. Valid at: http://www.dpfbf.mdrap.ro/articole/art_5_procesul_bugetar_local.pdf [Access: 16 June 2014];
- Directorate for local fiscal and budgetary policies of the Ministry of Regional Development and Public Administration. 2014c. *Situatia veniturilor si cheltuielilor unitatilor administrativ-teritoriale in perioada 2000-2013* [Online]. Valid at: http://www.dpfbf.mdrap.ro/sit_ven_si_chelt_uat.html [Access: 12 July 2014];
- Eminescu, M., 1999. *Inegalitatea naturala*, in the Political Work, Volume I, Edition edited by Bucur Popescu and Petru Demetru, p. 596, apud. Mazilu D., *Romania – saraca tara bogata*, Publishing House Institutului Revolutiei Romane din Decembrie 1989, Bucharest, 2013, p. 160;
- Kopanyi, M., et al., 2004. *Intergovernmental finance in Hungary - a decade of experience 1990-2000* [Online] pp. 593-616. Washington, DC: World Bank. Valid at: <http://documents.worldbank.org/curated/en/2004/01/6461065/intergovernmental-finance-hungary-decade-experience-1990-2000> [Access: 17 June 2014];
- Ministry of Public Finances, 2014. *Registrul situatiilor de insolventa a unitatilor administrativ-teritoriale* [Online]. Valid at: <http://www.mfinante.ro/insolventa.html?pagina=domenii> [Access: 13 June 2014];
- Oprina, E., Garbuleț, I., 2013. *Tratat teoretic si practic de executare silita*, Volume I + II, Publishing House Universul Juridic, Bucharest;
- Petek, G., Previdi, J., Murphy, S., Montrone, B., 2012. *Municipal Bankruptcy: Standard & Poor's Approach and Viewpoint* [Online]. Valid at: http://www.standardandpoors.com/spf/upload/Ratings_US/Municipal_Bankruptcy.pdf [Access: 12 July 2014].
- Rowen, H. H., 1961. “*L’etat c’est a moi*”: *Louis XIV and the State*, in French Historical Studies, Publishing House Duke University Press, Volume 2, No. 1, p. 83;
- U.S. Census Bureau, 2012. *Census of Governments, Individual State Descriptions: 2012* [Online]. U.S. Government Printing Office, Washington, DC, 2013. Valid at: <http://www2.census.gov/govs/cog/2012isd.pdf> [Access: 14 July 2014];
- Zdanovschi, A. C. M., 2014. *Aspecte privind legea bugetara anuala*, in the Romanian Journal of Foreclosure no. 1/2014, Publishing House Universul Juridic, Bucharest, pp. 136-147;